

<b>NO. UWY-CV15 6050025 S</b>	:	<b>SUPERIOR COURT</b>
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<b>DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO, ET AL</b>	:	<b>COMPLEX LITIGATION DOCKET</b>
	:	
<b>V.</b>	:	<b>AT WATERBURY</b>
	:	
<b>BUSHMASTER FIREARMS INTERNATIONAL, LLC, ET AL</b>	:	<b>JULY 2, 2021</b>

**PLAINTIFFS' MOTION TO COMPEL**

Now seven years into this litigation—a litigation that has twice been delayed by Remington’s bankruptcy filings—the plaintiffs are no closer to having their day in court. The reason is simple: Remington refuses to comply with their discovery obligations. Having represented to the plaintiffs and the Court on multiple occasions that their document productions were “substantially complete” and represented that there was great “substance and breadth” to those productions, the truth is there for all to see. So, if a picture really is worth a thousand words, here are some pictures to give the Court a sense of the “substance and breadth” that can be found in Remington’s document productions:



REM-0063318



REM-0041403

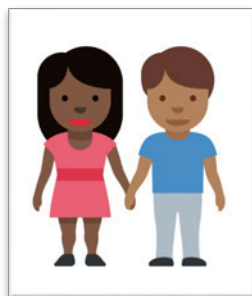


REM-0063486

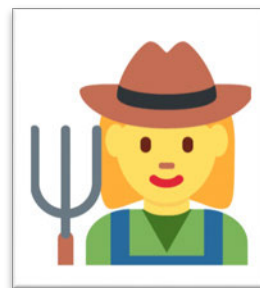
If more proof of the “substance and breadth” of Remington’s document productions is needed, there is also this:



REM-0034938



REM-0045185



REM-0045201

There are **18,459** more images such as these in Remington's document production.

But these cartoons are not all. There are also another **15,825** image files of people go-karting,<sup>1</sup> riding dirt bikes,<sup>2</sup> and socializing,<sup>3</sup> another **1,521** video files of gender reveal parties and the ice bucket challenge,<sup>4</sup> not to mention multiple duplicate copies of Remington catalogues.



REM-0059617



REM-0059523

And, to make it worse, Remington has produced much of the 18,465 cartoons, 15,825 random pictures, 1,657 videos and GIFs (such as the ice bucket challenge) without complete metadata, in violation of the Case Management Order, DN 230.00, so that it is impossible for the plaintiffs to

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<sup>1</sup> See Boehning Aff., Exs. I–K.  
<sup>2</sup> See Boehning Aff., Exs. L–M.  
<sup>3</sup> See Boehning Aff., Ex. N.  
<sup>4</sup> See Boehning Aff., Exs. O–P.

know the origin of much of Remington's production or to assess whether these seemingly random images and videos are, in fact, relevant. Indeed, the custodian for some 17,000 files produced by Remington is, unhelpfully, "Remington."

Even more important is what is *not* found in all of this—email communications. In total, Remington has taken the better part of seven years to produce 46,061 documents and in that set there are only **2,350** email communications, a number that reduces to 2,194 when duplicate emails are accounted for. That's **2,194** unique emails spanning a seven year period (2006–2012) for a company that employed more than 30 marketing personnel in 2010 alone. *See* Boehning Aff., Ex. Q at 51. And that's roughly 315 emails **per year** for all of Remington when research shows that the average corporate user sent and received 40,000 emails per year during this same time period.<sup>5</sup> *See Email Statistics Report*, THE RADICATI GROUP, 2009–2013, at 3 (May 2009).<sup>6</sup>

The plaintiffs are prejudiced by Remington's failure to take their discovery obligations seriously and to make a substantial production because discovery deadlines are fast approaching, and the plaintiffs require the documents they requested to begin taking vital depositions. As such, the plaintiffs seek all documents, including emails and electronic communications, responsive to the plaintiffs' discovery requests for a set of custodians proposed by the plaintiffs from the period January 2006 to December 2012.

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<sup>5</sup> If Remington were to actually produce responsive email communications, the plaintiffs should receive emails from Remington's 32-member marketing department, *see* Boehning Aff., Ex. Q at 51, as well as from their leadership, concerning the marketing and advertising of assault rifles over a six-year period. That universe of responsive email communications would far exceed the 2,194 total emails that currently purport to cover the entire relevant six year period.

<sup>6</sup> Corporate users sent and received, on average, 167 emails per day in 2009. *Id.* Assuming that the average corporate user worked five days a week, 52 weeks a year, the amount of emails sent in that year would have been 43,420.

For these reasons, the plaintiffs respectfully move the Court to compel Remington to comply with the plaintiffs' discovery requests by August 1, 2021, to file an affidavit of compliance, and to provide the plaintiffs with their privilege log.

### **BACKGROUND**

Since this matter began in 2014, the plaintiffs have served three sets of requests for the production of documents ("RFPs") on Remington. *See* Boehning Aff. ¶ 4; *see also* Boehning Aff., Exs. A–C. Compliance with all of those RFPs is at issue here. But immediately prior to Remington's second (and final) bankruptcy filing, Remington was purportedly focused on responding to the plaintiffs' third RFP, which was served on April 22, 2020, after the Connecticut Supreme Court held that the plaintiffs' wrongful marketing Connecticut Unfair Trade Practices Act claims could proceed. *See* Boehning Aff. ¶ 4; *see also* Boehning Aff., Ex. C. These 39 RFPs were narrowly tailored to the surviving claim for wrongful marketing and generally sought documents related to Remington's advertising and marketing campaigns for assault rifles.<sup>7</sup>

On June 22, 2020, Remington served their objections to the plaintiffs' third set of RFPs. *See* Boehning Aff., Ex. D. Remington lodged objections to these RFPs, but nevertheless stated that they would produce responsive material from the agreed-upon time period of January 1, 2006 to December 14, 2012. This material was to include copies, drafts, and alternative versions

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<sup>7</sup> Plaintiffs' third RFP generally requested documents, including correspondence, concerning: (i) Assault Rifle advertisements; (ii) Social Media; (iii) domain names; (iv) Designated Market Areas; (v) targeted advertising; (vi) employees that created the relevant advertisements; (vii) advertising or marketing firms; (viii) communications with influencers; (ix) the company's target market; (x) complaints, questions or comments sent to the company; (xi) communications with competitors or the National Rifle Association; (xii) research regarding marketing campaigns; (xiii) marketing plans and creative briefs; (xiv) product placement; (xv) marketing demographics; (xvi) national or Connecticut state laws and regulations; and (xvii) potential crimes. *Boehning Aff., Ex. C.*

of their advertisements for AR-type rifles; documents reflecting their analysis of social media use and internet traffic; relevant market research studies, consumer segmentation reports, customer and consumer surveys, and related documents concerning AR-type rifles; communications with outside entities employed by Remington to assist in the marketing and development of advertisements for AR-type rifles; marketing plans and creative briefs concerning AR-type rifles; and emails and other communications related to all of the listed topics.

**I. Remington Has Used Delay Tactics, Misrepresentations, and Other Measures to Avoid Producing Documents**

Instead of actually providing documents responsive to the third set of RFPs, Remington has spent the discovery period shielding their discovery practices from the plaintiffs and the Court, refusing to supplement *or even discuss* their production deficiencies with the plaintiffs, and repeatedly using the promise of future “substantial” productions to delay litigating the issue.

**A. Remington’s Efforts to Prevent the Plaintiffs from Learning About Their Document Retention and Collection Protocols**

Remington has repeatedly refused to disclose any information related to their preservation, collection, and production of documents, including the custodians and search terms used in connection with their document productions—all information that is regularly discoverable in litigation. DN 306.00 at 1–2. Remington went so far as to seek a Court order preventing the plaintiffs from deposing a corporate representative about these topics. *Id.* The Court denied Remington’s motion and ordered Remington to provide corporate designees for a deposition, DN 306.10. Remington finally designated two witnesses on July 24, 2020. Sterling Aff. ¶ 39; Sterling Aff., Ex. T.

Additionally, Remington repeatedly refused to provide plaintiffs with relevant custodian data for certain document requests, citing the “magnitude of burden and expense” of doing so.

Sterling Aff. ¶¶ 27–28. Even after this Court rejected Remington’s arguments and ordered the parties to meet and confer about the issue,<sup>8</sup> DN 316, Remington refused to identify which custodians would be appropriate for the request during the July 23, 2020 meet-and-confer.

Sterling Aff. ¶¶ 37–38. Remington instead promised to provide the plaintiffs with an annotated list that described why certain custodians were inappropriate after July 29, 2020, citing their associates’ lack of availability as the reason they could not provide an annotated custodian list sooner. *Id.* ¶ 38.

On July 27, 2020, Remington filed for bankruptcy and the litigation was automatically stayed, DN 317.00. The bankruptcy filing came just four days after the meet-and-confer and three days after they finally designated their corporate designees. The plaintiffs still have not received Remington’s annotated list of custodians or been able to take the corporate designee depositions.<sup>9</sup>

#### **B. Remington Has Refused to Supplement or Discuss Production Deficiencies**

Throughout May, June, and July 2020, the plaintiffs repeatedly raised with Remington their concerns about Remington’s productions. Remington refused to discuss these concerns.

**May 2020.** After Remington’s first four document productions contained only 874 documents and **zero** emails, the plaintiffs sent a letter to Remington on May 5, 2020, identifying several deficiencies in the first four productions, including Remington’s failure to produce a single email communication. Sterling Aff. ¶¶ 6–11. The parties exchanged a series of letters over the next several weeks in which Remington made no attempt to respond to the plaintiffs’ inquiry about the lack of email correspondence in their productions, except to accuse the

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<sup>8</sup> This Court also ordered Remington to produce a privilege log “within 30 days of the resolution of this issue.” Sterling Aff. ¶ 36.

<sup>9</sup> On June 30, 2021, the plaintiffs re-noticed the two corporate designee depositions for August 4 and August 5, 2021.

plaintiffs of attempting to “increase the burden and expense of discovery.” *Id.* ¶ 15. During this period, Remington represented to the Court that they had “already made substantial productions”—referring to the **874 documents** already produced. *Id.* ¶ 14. Remington also represented to the plaintiffs that another substantial production of ESI was forthcoming and would contain “communications related to marketing materials.” *Id.* ¶ 15.

The plaintiffs, trusting that Remington was acting in good faith, chose to await Remington’s substantial production rather than escalate the issue or attempt to involve the Court in a discovery dispute. On May 27, 2020, the plaintiffs received Remington’s “substantial” production; it consisted of 388 unique documents, of which 156 were unique email communications. *Boehning Aff.* ¶ 11.

**June 2020.** On June 1, 2020, after reviewing Remington’s latest production, the plaintiffs emailed Remington’s counsel and asked to schedule a meet-and-confer to discuss “the status of Remington’s compliance.” *Sterling Aff.* ¶ 18. Remington’s counsel replied that their availability depended on what topics the plaintiffs wanted to discuss. *Id.* The plaintiffs responded that they wanted to discuss “the scope and substance of Remington’s document productions to date and any contemplated, future document production.” *Id.* Over the next week, the parties exchanged several emails in which Remington’s counsel refused to acknowledge or respond to the plaintiffs’ repeated requests to schedule a meet-and-confer. *Id.* ¶¶ 19–22, 31, 35.

Remington represented that they would make another production by June 22, 2020, that would “include additional emails,” and an additional production by July 3, 2020, at which time its “production of documents would be substantially complete.” *Id.* ¶¶ 19, 22 (emphasis added). The plaintiffs once again relied on Remington’s representations. *Id.* ¶ 21.

A status conference was held with the Court on June 15, 2020. *Id.* ¶ 24. During the conference, the plaintiffs alerted the Court to Remington’s refusal to meet and confer and the deficient state of the document productions thus far. *Id.* In response, Remington represented to the Court that they would be making two additional productions, and argued that the plaintiffs needed to wait until they reviewed “that substantially complete production of documents.” *Id.* The Court required Remington to pick a date before the next status conference for a meet-and-confer to discuss objections that each party had lodged against the other’s discovery, including Remington’s to-be-filed objections to the plaintiffs’ third set of RFPs. *Id.*

On June 22, 2020, the plaintiffs received the first promised production; it consisted of 1,263 unique documents, including 446 unique emails and 370 non-substantive or unreadable documents. *Boehning Aff.* ¶ 13. On June 30, 2020, Remington made another production; it consisted of 19 catalogues. *Id.* ¶ 14. No additional productions were received by July 3, 2020.

On June 26, 2020, the *Wall Street Journal* reported that Remington was making preparations to file bankruptcy for a second time since 2018.<sup>10</sup> Remington said nothing to the plaintiffs.

**July 2020.** In early July, the plaintiffs reached out to Remington yet again to attempt to schedule a meet-and-confer to discuss deficiencies in Remington’s productions. *Sterling Aff.* ¶ 27. Remington responded on July 7, 2020, and finally agreed to meet and confer on July 14, 2020. *Id.* ¶ 31. On July 9, 2020, Remington represented that another substantial production was forthcoming that would “number nearly 100,000 pages,” and suggested that the parties defer the

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<sup>10</sup> See Alexander Gladstone & Andrew Scurria, *Gun Maker Remington Preps for Bankruptcy, Seeks Sale to Navajo Nation*, WALL STREET JOURNAL (June 26, 2020), <https://www.wsj.com/articles/gun-maker-remington-preps-for-bankruptcy-seeks-sale-to-navajo-nation-11593186468>.



meet-and-confer until the plaintiffs had seen and understood the “substance and breadth” of the forthcoming production. *Id.* ¶ 31. That same day, the plaintiffs received a production of 37,120 documents. Boehning Aff. ¶ 15. While this was by far Remington’s largest production to date, a review of the documents showed that it contained little if any “substance and breadth.” The production did not contain a single email. *Id.* ¶ 18. Instead, it contained 18,465 Scalable Vector Graphics (“SVG”) or Portable Graphics Format (“PNG”) files, which are two different types of image files, of random cartoon images like those shown above. *Id.* ¶ 16. Several days later, the plaintiffs received a final production that included 1,592 unique emails from 18 total custodians. *Id.* ¶ 19. Several notable custodians are missing from this production of emails, including Mark Eliason, the former Commercial Distributor of Sales Manager at Bushmaster; Roy Gifford, the former VP of Brand Management and Research; and Ted Novin, the former Director of Marketing & Public Affairs.

On July 13, 2020, Remington’s counsel canceled the meet-and-confer scheduled for the next day due to “pressing business in other matters”—which in hindsight appear to be the imminent protection of bankruptcy, to be obtained just a few days before the delayed meet and confer date proposed by counsel. Counsel proposed rescheduling the meet-and-confer to July 28 or 29, 2020. Sterling Aff. ¶ 35. Remington also promised to provide the plaintiffs with “some type of document reflecting narrowed or eliminated [ ] objections” for the third set of document requests. *Id.* The plaintiffs agreed to reschedule the meet-and-confer to July 29. *Id.*

On July 27, 2020, Remington filed for bankruptcy and the litigation was automatically stayed. DN 317.00. The plaintiffs learned of Remington’s bankruptcy through court filings and news reports.

### **C. Remington's Delay Tactics Have Continued Post-Bankruptcy**

After almost a year in bankruptcy court, the automatic stay was lifted. On June 17, 2021, the parties held a meet-and-confer. The plaintiffs reminded Remington of their longstanding concern over the substance of Remington's production. Remington notified the plaintiffs' counsel that before the bankruptcy stayed the case, they had been reviewing a large batch of documents for an additional production. Counsel for Remington reported that they were 75% done with the process before the case was stayed. When the plaintiffs raised the prospect of this motion, counsel for Remington *once again* suggested the plaintiffs wait until Remington had made their upcoming production.

### **II. Standard on Motion to Compel**

The Connecticut rules of discovery are meant to serve the ends of justice "by facilitating an intensive search for the truth through accuracy and fairness, [and by] provid[ing] procedural mechanisms designed to make a 'trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.'" *Picketts v. Int'l. Playtex, Inc.*, 215 Conn. 490, 508 (1990) (citation omitted). Discovery is generally permitted, "if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence." Prac. Bk. § 13-2. Connecticut courts "have construed discovery liberally and broadly." *Dunn v. Chen*, 2011 WL 726112, at \*2 (Conn. Super. Jan. 28, 2011) (Brazzel-Massaro, J.). A party is only required to "demonstrate good faith as well as probable cause that the information sought is both material and necessary to his action." *Journal Publishing Co. v. Hartford Courant Co.*, 261 Conn. 673, 681 (2002).

A motion to compel is governed by Practice Book § 13-14 which provides in relevant part: "(a) If any party . . . failed to respond to requests for production . . . the judicial authority may, on motion, make such order as the ends of justice require." The Court has broad authority

to “make such order as the ends of justice require.” *Metropolitan Life Ins. Co. v. Aetna Casualty & Surety Co.*, 249 Conn. 36, 51 (1999).

### **III. Remington’s Productions Are Facially Inadequate**

Remington has treated discovery as a game. Unwilling to have this case decided by a jury on the merits with a full record, Remington has sought delay and obfuscation at every turn. Remington’s productions have been inadequate in almost every way imaginable. To begin with, Remington has produced to the plaintiffs almost no emails, including very few, if any, emails from key personnel. *See infra* at 14. Then, what Remington *has* produced is impossible to decipher because it was produced with little to no metadata<sup>11</sup> in direct violation of the Case Management Order<sup>12</sup>—there is simply no way for the plaintiffs to review and understand the documents without the proper metadata, including the proper custodian, the date created, and the file name.

Remington has represented repeatedly to the plaintiffs and the Court that their productions would be “substantially complete” by July 2020. Sterling Aff. ¶ 22. At the end of that month, Remington had produced a grand total of 46,061 documents. Boehning Aff. ¶ 22. Out of the 46,061 total produced documents, there were 18,465 cartoons (like Santa Claus and

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<sup>11</sup> Document metadata is information stored inside a document that provides key contextual data about the document, such as authorship, creation date, editing time, the last date edited, and other documents with which it might be associated, among other information. *See* Larry E. Daniel, 27.2.3 *Document metadata*, DIGITAL FORENSICS FOR LEGAL PROFESSIONALS (2012).

<sup>12</sup> The first three productions—which consists of 605 total documents—were received before the Case Management Order was filed with the Court. Boehning Aff. ¶¶ 6–9. All remaining productions—which in total is 45,456 documents—should have complied with the Case Management Order. The Case Management Order states that “[a]ll productions will include the applicable production fields as specified in Attachment A, to the extent available.” DN 230.00; *see also*, Boehning Aff., Ex. E. The production fields—or metadata—identified in the Case Management Order include information related to MD5 hash value, custodians, and relevant dates.

the farmer shown above); 3,295 duplicate documents; 15,825 random pictures (including the go-karts); 1,657 videos and GIFS (including the ice bucket challenge videos); and 205 documents containing unreadable computer code, for a total of 39,455 documents out of 46,061 total documents produced. *Id.* It is key to understanding the inadequacy of Remington's production that **none** of these seemingly random items were produced with **any** metadata. This failure alone prevents the plaintiffs from understanding why these documents were identified as responsive (if, in fact, they were) and to which requests they are purportedly responsive.

When the seemingly random cartoons, images, videos, duplicates, and other items noted are accounted for, Remington, it would seem, has spent the better part of seven years producing 6,606 potentially useful documents in response to the plaintiffs' requests, only about a third of which (or 2,194 documents) are unique email communications.

Even these 6,606 documents are not without problem. *First*, the fact that Remington has produced a total of 2,194 emails is, standing alone, confirmation that Remington has not met their discovery obligations. And it is even more egregious when one factors in Remington's marketing budget, number of marketing employees, and use of third-party vendors to support their social media, marketing and advertising efforts. *Second*, Remington provided documents for 27 custodians across the entire seven year period despite the fact that Remington employed more than 30 marketing personnel in 2010 alone (and the organizational charts produced reflect turnover in these positions, which only serves to increase the number). As a result, Remington has not even bothered to collect from many key marketing employees and executives. *Third*, Remington produced thousands of documents without the metadata necessary for the plaintiffs to review these documents. *Id.* ¶ 44–47.

**Emails.** As previously outlined, in response to the third set of RFPs, Remington agreed to produce all emails and other communications related to copies, drafts, and alternative versions of advertisements for AR-type rifles; the analysis of social media use and internet traffic; relevant market research studies, consumer segmentation reports, customer and consumer surveys, and other related documents concerning AR-type rifles; Remington’s work with outside entities employed by Remington to assist in the marketing and development of advertisements for AR-type rifles; and marketing plans and creative briefs concerning AR-type rifle. *See* Boehning Aff., Ex. D. Remington has produced only 2,305 email communications **total**, and **only** 2,194 unique emails across all of their productions. *See* Boehning Aff. ¶ 5. It is inconceivable that Remington’s entire marketing department, which as noted consisted of over 30 employees in 2010 alone, sent a mere 2,194 relevant, non-privileged emails during the seven year period from 2006 to 2012. *See id.* And yet, Remington expects the plaintiffs and the Court to believe these are the only relevant emails in a seven year time period. *Id.* ¶ 19.<sup>13</sup> For context, the average corporate user sends and receives over 40,000 emails **per year**. *Email Statistics Report*, THE RADICATI GROUP, 2009-2013, at 3 (May 2009). Remington’s so-called “substantial productions” have provided roughly 315 emails **per year** for all of Remington. Further, the plaintiffs cannot be sure whether emails were withheld for privilege, since Remington has yet to provide a privilege log. *See* Sterling Aff. ¶ 40.

Remington’s production of fewer than **315 marketing emails per year** requires court intervention. *See New Orleans Reg’l Physician Hosp. Org., Inc. v. United States*, 122 Fed. Cl. 807, 811, 818 (2015) (ordering new productions where defendant produced only a “small

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<sup>13</sup> From what the plaintiffs can tell, the substance of these email productions is also deficient. Remington’s productions include few emails—and sometimes no emails—to, from, or copying key personnel. *Id.* ¶¶ 23–36.

number of emails and reports,” from an employee who testified that she communicated regularly by email). Nor can Remington claim that their production is complete with respect to marketing materials given the millions that Remington and Bushmaster allocated to marketing year after year. Remington’s claims that their production is now substantially complete cannot possibly be true.

***Custodians.*** The produced emails came from the documents of only 27 custodians. This is problematic because a simple review of organizational charts and public resources reveals a list of 66 potential custodians who worked in marketing, sales or leadership at the company **in 2012 alone**. *See* Sterling Aff. ¶ 29. Although parties often disagree on the number of custodians, that at least 66 custodians should have been searched, and only 27 apparently were, is another easy illustration of how Remington has under-produced.

Drilling down on the actual custodians from whom relevant emails would be expected, it is clear that Remington neglected to produce documents from several notable custodians. For example, there are no custodial emails from either Remington’s Vice President of Brand Management & Research or Remington’s Vice President of Product Management & Marketing. Boehning Aff. ¶¶ 28, 35–36. Remington can have no quarrel with a request that documents from these two individuals should be produced (and cannot seriously contend that these individuals did not generate a single responsive email). Nor are there custodial emails from *any* of the four noticed deponents, who each respectively served as Director of Marketing, Director of Commercial Distributor Sales, Internal Sales and Customer Service Manager, and Consumer Insight Manager. *Id.* ¶¶ 31–34. The plaintiffs cannot take meaningful depositions of key employees without their documents.

Even where Remington produced documents for what are likely appropriate custodians, the number of emails produced is insufficient to account for the seven-year time period. For example:

- There are only 195 emails which appear to be from the account for Scott Blackwell, who was **Remington's President** from 2012–2013. Before that, he was Remington's President of Global Sales & Marketing in 2008, Chief Sales Officer in 2009–2010, and Chief Sales and Marketing Officer in 2011. *Id.* ¶ 26.
- There are only **two** emails which appear to be from the account for Ted Novin, Remington's Director of Public Affairs & Social Media in 2012, Director of Marketing & Public Affairs in 2013, and Director of Industry Relations and Public & Government Affairs from 2014–2015. *Id.* ¶ 25.
- There are only 408 emails which appear to be from the account for Marc Hill, Remington's **Chief Marketing Officer** in 2010. *Id.* ¶ 27.
- There are only 197 emails which appear to be from the account for Ryan Smith, who served as Remington's Product Manager of Tactical/LE Firearms in 2010, and has described himself as "**the marketing department for**" **Bushmaster**. *See id.* ¶ 30; *see also* Boehning Aff., Ex. R.
- There are only 319 emails which appear to be from the account for John Trull, Remington's **Director of Marketing** in 2006–2007, Director of Firearms & Custom Shop Brand Management & Product Development in 2008, Vice President of Brand Management/NPD Firearms in 2009, Vice President of Product Management & Marketing from 2010–2011, Vice President of NPI

Product Management in 2012, and Senior Vice President, General Manager of Long Guns in 2013. *Id.* ¶ 28.

- There are only 485 emails which appear to be from the account for Phil Murdock, Remington’s Vice President of Sports Marketing in 2008, Vice President of Channel & Events Marketing from 2009–2010, and **Vice President of Marketing** from 2011–2012. *Id.* ¶ 29.

The productions also include few emails—and sometimes no emails—to, from, or copying key third party advertising partners and marketing strategists. Boehning Aff. ¶¶ 37–42. For example, Brothers & Co.—a marketing agency based in Tulsa, Oklahoma—provided marketing services for Remington’s assault rifles for several years during the relevant time period. *See id.* ¶ 38; *see also* Boehning Aff., Exhibit S. Remington identified Brothers & Co. as one of their top 40 creditors in their most recent bankruptcy, stating that they owed \$344,444 to Brothers & Co. for “marketing services.” *See* Boehning Aff., Ex. T. Across Remington’s entire production, there were only 146 unique email communications between Remington and employees of Brothers & Co. Boehning Aff. ¶ 38.

The plaintiffs’ review of the documents revealed a number of other relevant third parties for which Remington produced even fewer email communications than they did for Brothers & Co. For example:

- There are zero email communications between Remington and employees of Activision Publishing Inc. (“Activision”), a developer of Call of Duty and other video games. *Id.* at ¶ 41. This is despite the inclusion of multiple internal



PowerPoint decks discussing the well-publicized relationship between Remington and Activision.<sup>14</sup>

- There is one email communication between Remington employees about Salesforce, which is a customer relationship management platform that can be used to support and provide analytics about marketing efforts. Boehning Aff. at ¶ 39; *see also* Boehning Aff., Ex. U.
- There are two unique email communication between Remington and employees of Mastiff, a video game developer. *Id.* at ¶ 42. This is despite the inclusion of press releases touting the relationship between Remington and Mastiff (press releases which were inexplicably marked “confidential” despite having been released to the public).<sup>15</sup>
- There are 85 unique email communications between Remington and employees of RSM, which develops integrated marketing strategies for online promotion and in-store merchandising. Boehning Aff. at ¶ 40; *see also* Boehning Aff., Ex. V.

**Metadata.** Seventy-nine percent of the 21,998 documents are photos and videos produced without metadata, identifiable custodians,<sup>16</sup> or any explanation of when, where, how, or why Remington used these photos and videos.<sup>17</sup> Even when Remington provided the

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<sup>14</sup> See, e.g., Malathi Nayak, *Video game maker drops gun makers, not their guns*, REUTERS (May 7, 2013), <https://www.reuters.com/article/us-videogames-guns/video-game-maker-drops-gun-makers-not-their-guns-idUSBRE9460U720130507>.

<sup>15</sup> IGN Staff, *Mastiff and Remington Arms Company, Inc. Announce Videogame Publishing Deal*, IGN (Jun. 13, 2012), <https://www.ign.com/articles/2009/10/02/mastiff-and-remington-arms-company-inc-announce-videogame-publishing-deal>.

<sup>16</sup> The plaintiffs do not believe that Remington’s identification of “Remington” as the custodian for 17,000 documents constitutes an identifiable custodian.

<sup>17</sup> This includes 40,601 documents produced without information indicating the date created, *id.* ¶ 46; 662 documents without MD5 hash values, which would allow the plaintiffs to identify duplicate documents, *id.* ¶ 49; and 843 documents without custodian metadata, *id.* ¶ 47.

custodian of a document, it was often unhelpful; for example, 17,000 documents list “Remington” as the custodian. *Id.* ¶ 48.

Further, Remington failed to collect and produce a complete history of their presence on Facebook, Twitter, and Instagram, and produced that history in largely unusable form. *Id.* ¶¶ 50–53; Boehning Aff., Exs. W–AD. Remington produced eight images comprising what appear to be the Facebook, Twitter, and Instagram profile pages for Remington Arms Co., Bushmaster, and DPMS Panther Arms (a Remington subsidiary specializing in assault rifles), but Remington inexplicably omitted the Instagram page for Bushmaster. *Id.* There is no doubt that these accounts are within Remington’s possession, custody, and control. Further, there are well-known and easily applicable techniques available for properly producing the contents of social media accounts, which would allow the plaintiffs to review these pages with all necessary content and metadata. An image of a profile page does not provide useful information about social media presence, much less the information requested by the plaintiffs. Remington’s current production is also missing responsive embedded data, such as communications to Remington via social media.<sup>18</sup>

The lack of metadata limits the plaintiffs’ review of the vast majority of these productions, not just the social media pages. For example, the plaintiffs have no way of knowing if the 15,825 image files and 1,521 video files that on their face do not appear to relate to the

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<sup>18</sup> Nor did Remington produce a history of their social media presence in a functional format. Instead of retaining professionals to collect their social media history, Remington appears to have relied on the method involving the least effort—they visited webpages for their various social media accounts and clicked “Print to PDF.” *Id.* ¶ 52. The resulting images are low-quality, not text-searchable, and lack metadata; they would be largely unusable as trial exhibits. *Id.* ¶ 53. Remington’s deficient production quality is not only confined to their social-media-related productions but extends beyond to other (non-responsive) productions as well. *See, e.g.,* Boehning Aff., Ex. AE.

marketing and advertising of assault rifles are actually relevant in some way. These files include the advertisements for Remington coffee mugs, hundreds of photos of animals being killed, and the previously described pictures of individuals go-karting and videos of gender reveal parties and ice bucket challenges. Boehning Aff. ¶ 22; *see supra* 2. Because Remington produced these files without any context or metadata, the plaintiffs have no way of understanding when or where these videos were used by Remington, if ever.

#### **IV. A Court Order Is Necessary to Enable the Plaintiffs to Take Meaningful Discovery**

A Court Order is particularly important here, as several discovery deadlines are fast approaching. The plaintiffs should be ready to take substantive depositions of Remington employees at this point in the case, however, due to Remington's inadequate productions, the plaintiffs are without meaningful documents that should inform and focus those vital depositions. The plaintiffs require adequate time to receive, review, and use the relevant documents in preparation. To be specific, the plaintiffs have re-noticed three depositions that were scheduled before the automatic stay of the bankruptcy proceeding began—including one for Alfred Russo, who has not been identified as a custodian in any production. The plaintiffs would also like to depose Ryan Smith, Ted Novin, Scott Blackwell, Marc Hill, and Phil Murdock, among other key witnesses. However, the lack of emails produced for these potential witnesses has forced the plaintiffs to seek this relief. If an appropriate production of documents had been made by Remington, the plaintiffs would instead be noticing these depositions.

Having repeatedly represented to the plaintiffs and this Court that it was devoting extensive resources to making what it described as “substantial” document productions that included relevant ESI, Remington has instead made the plaintiffs wait years to receive cartoon images, gender reveal videos, and duplicate copies of catalogues (which take up over 18,000

pages of Remington’s “substantial production”). There is no possible reasonable explanation for this conduct.

Predictably, Remington has also already raised the notion that the plaintiffs should wait for another upcoming production before the Court or the plaintiffs judge their compliance with their discovery obligations. But Remington had their chance to comply. At every opportunity, Remington has either attempted to avoid meet-and-confers altogether, or has avoided the plaintiffs’ reasonable inquiries by making promises and expectations they have not kept. Not only has Remington flat out refused to address the plaintiffs’ requests to discuss discovery, they have also delayed meet-and-confers and other deadlines to days that it knew would come *after* the bankruptcy filing and stay of litigation.<sup>19</sup> The plaintiffs are not convinced that after another year-long delay in discovery, Remington will now be willing to meet-and-confer and produce the requested documents promptly. The plaintiffs have waited almost ten years for justice. This Court should not allow Remington to further fuel this delay by continuing to claim that the “next” production will be enough. Compliance with its discovery obligations is required now.

### **CONCLUSION**

The plaintiffs respectfully request that the Court:

1. Order Remington to produce all documents, especially including all emails, responsive to the plaintiffs’ discovery requests from the 55

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<sup>19</sup> Remington’s delays, bankruptcy filing (which it hoped would shed this lawsuit), and effort to lard its document production with cartoons and duplicate catalogues sends a strong message about the real motive here. Remington is desperate to avoid a true review of the internal and external communications detailing its abusive marketing practices. But the Connecticut Supreme Court envisioned that such a review would take place before any further attempt by Remington at motion practice. *Soto v. Bushmaster Firearms Int’l, LLC*, 331 Conn. 53 (2019).

custodians identified in Appendix A<sup>20</sup> from January 1, 2006 to December 31, 2012, by no later than August 1, 2021;

2. Order Remington to file an affidavit of compliance with this Court; and
3. Order Remington to produce their privilege log.

Dated: July 2, 2021

THE PLAINTIFFS,

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<sup>20</sup> Appendix A lists the 27 custodians already identified by Remington in their previous productions so that emails and documents for these custodians can be re-pulled and produced. It also lists 28 other custodians who were identified based on a review of the organizational charts produced and public searches. The plaintiffs reserve the right to seek documents from additional custodians.

## **CERTIFICATION OF SERVICE**

This is to certify that a copy of the foregoing has been mailed, postage prepaid, and emailed this day to all counsel of record as follows:

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BUSHMASTER FIREARMS, INC., A/K/A;  
BUSHMASTER HOLDINGS, INC., A/K/A;  
REMINGTON ARMS COMPANY, LLC, A/K/A;  
REMINGTON OUTDOOR COMPANY, INC., A/K/A

Dated: July 2, 2021

/s/ Alinor C. Sterling  
\_\_\_\_\_  
Joshua D. Koskoff  
Alinor C. Sterling  
Jeffrey W. Wisner

## **Appendix A**

### **Plaintiffs' List of Potential Custodians**

The plaintiffs request that the emails and documents for the following 27 custodians be re-pulled and produced to ensure the complete responsive set of documents:

1. Adam Ballard
2. Carlos Martinez
3. Christian Hogg
4. Dave Garretson
5. Dell Fulcher
6. Dillion Jennings
7. Ed Mazzeo
8. Gary Keffer
9. Jason Schauble
10. Jay Bunting
11. Jessica Kallam
12. John Day
13. John Fink
14. John Trull
15. Jordan Davis
16. Kemp Newnam
17. Kyle Luke
18. Linda Powell
19. Marc Hill
20. Mitch Cox
21. Phil Murdock
22. Ryan Smith
23. Rob McCanna
24. Scott Blackwell
25. Scott Franz
26. Ted Novin
27. Terry Wessling

The plaintiffs request that the emails and documents for the following 28 custodians be pulled and produced:

1. Alfred Russo
2. Amy Dee
3. Chip Klass
4. Davida McMillian
5. Donald Campbell
6. Doug Lowes
7. Edward Rensi
8. Eric Epperson



9. George Kollitides II
10. JaRonn Nelson/Clark
11. Jeffery B. Costantin
12. John D. (Sean) Dwyer
13. John DeSantis
14. Joseph Andrews
15. Joseph Gross
16. Katie Hale
17. Keith Enlow
18. Kent Graper
19. Kevin Graff
20. Kevin Miniard
21. Lea Ramthun
22. Lisa Walters
23. Mark Eliason
24. Roy Gifford
25. Shari-Lynn Fix
26. Thomas Millner
27. Thomas Tyler
28. Tom Scott